



**DEPARTMENT OF COMMUNITY PLANNING AND BUILDING
INTEROFFICE MEMORANDUM**

TO: Board of County Commissioners and Planning Commission
VIA: Terry Shannon, County Administrator *TS*
VIA: Mark Willis, Director *mw*
FROM: Dave Brownlee, Environmental Principal Planner *DB*
DATE: March 29, 2017
SUBJECT: Joint Public Hearing – Text Amendment Case No. 14-03R, Amendments to the Administrative Variance Section of the Zoning Ordinance

Background:

A joint public hearing was held on November 17, 2015 pertaining to text amendments of the Forest Conservation Program (Sections 8-3, 11-3 and Article 12 of the Calvert County Zoning Ordinance). These amendments have been approved and adopted (Ordinance 08-17). However, when the approved amendments were sent to the Maryland Department of Natural Resources (DNR) for approval, DNR Forestry Service staff replied on March 22, 2016 with additional comments (Attachment A) on the forest conservation aspects of the Administrative Variance Section (11-3) of the Zoning Ordinance. It was determined that another public hearing would be necessary to address these comments. The Administrative Variance Section of the Zoning Ordinance (Section 11-3) is proposed to be updated to address the concerns expressed by DNR. In addition these amendments reinstate the amendments previously adopted by Ordinance 27-15 and undone by Ordinance 08-17.

Discussion:

DNR staff's main concerns were that they did not want DNR included in the review of administrative variances, but they did want to receive copies of the final administrative variance orders. DNR staff also proposed some editorial changes. The proposed amendments (Attachment B) are attached. In addition these amendments reinstate the amendments previously adopted by Ordinance 27-15 and undone by Ordinance 08-17.

Conclusion/Recommendation:

Recommend that the Planning Commission recommend to the Board of County Commissioners that they close the record and adopt the proposed amendments in Text Amendment Case 14-03R.

Attachments: A. Letter from Maryland DNR (March 22, 2016), B. Proposed amendment to Section 11-3, Administrative Variances C. Planning Commission Resolution, D. Legal Notice

**Proposed Amendments to the
Administrative Variance Section (11-3) of the
Zoning Ordinance**

**Joint Public Hearing
Board of County Commissioners
And
Planning Commission**

April 11, 2017

Purpose of Public Hearing

- Present amendments to the Administrative Variance provisions (Section 11-3) of the Zoning Ordinance.
- Receive Public Comment
- Get recommendation from the Planning Commission (PC)
- Board of County Commissioners (BOCC) decide on adoption of proposed amendments

Purpose of Amendments

- To update the Administrative Variance provisions (Section 11-3) to address concerns expressed by Maryland Department of Natural Resources staff
- To reinstate amendments previously adopted by Ordinance 27-15 and undone by Ordinance 08-17.

Background

- Joint public hearing (11/17/15) on text amendments to the Forest Conservation Program
- Amendments were adopted (Ordinance 08-17) but unintentionally erased some of the amendments adopted by Ordinance 27-15.
- Maryland Department of Natural Resources (DNR) requested changes after public hearing and approval to Section 11-3, Administrative Variances
- Another public hearing is necessary to address DNR comments and to reinstate amendments in Ordinance 27-15.

DNR's Concerns

- Do not wish to be part of the administrative variance review process
- Want to receive copies of final orders of the administrative variances relative to Forest Conservation.
- Editorial amendments

Significant Proposed Changes

- Section 11-3.01.C.2
- The Department of Planning and Zoning shall send notice of a request for a variance to the forest conservation regulations in Section 8-3.04.H.1. **bc-e** to the Maryland Department of Natural Resources within 15 days of receipt of a request for a variance. **In addition, a copy of the final administrative variance order shall be sent to the DNR Forestry Service.**

Significant Proposed Changes

- Section 11-3.01.D.2
- ~~For variances from forest conservation regulations found in 8-3.04.H.1.b the comments from the Maryland Department of Natural Resources (DNR) must be addressed to the satisfaction of DNR or the applicant shall be required to withdraw the application and submit a variance request to the Board of Appeals.~~

Reinstating Ordinance 27-15

- Allows the Zoning Officer to grant Administrative Variances for sign height and parking requirements.

Next Steps

- Comments and questions from the PC and BOCC
- Questions from the public
- Public Comment
- Planning Commission Recommendation
- Board of County Commissioners' decision on adopting amendments

Staff Recommendation

- Recommend that the Planning Commission recommend to the Board of County Commissioners that they close the public record and approve the amendments.

Attachment A

**Letter from Maryland Department of Natural Resources
March 22, 2016**



*Larry Hogan, Governor
Boyd Rutherford, Lt. Governor
Mark Belton, Secretary
Joanne Throwe, Deputy Secretary*

RECEIVED

MAR 28 2016

Community Planning
and Building

March 22, 2016

David Brownlee
Calvert County Department of Community, Planning and Building
150 Main St
Prince Frederick, MD 20678

RE: Amendments to Calvert Co Forest Conservation Program
November 24, 2015 letter; Joint Public Hearing of Commission and Board of Commissioners

Dear Mr Brownlee:

Thank you for your submittal package dated November 24, 2015. I apologize for the delay in responding. I have reviewed the Amendments to the Calvert County Zoning Ordinance: Forest Conservation Regulations; Text Amendment Case No 14-03.

- The proposed amendments to Section 8-3 Forest Conservation have been determined to meet the standards of the Forest Conservation Act.
- The proposed amendments to Section 11-3 Administrative Variances need to be revised to reflect COMAR 08.19.03.01 Article XIV 14.1. The county needs to notify the MD Forest Service that a forest conservation variance has been requested and the county's response to the request. The MD Forest Service is not required to review the request. This is necessary in order to comply with Article XIV 14.1 E which gives the Department of Natural Resources the ability to intervene in any variance approvals. I apologize for the lateness of this comment but this language was not included in previous forest conservation draft amendment submissions.

If you have any questions I can be reached at (410) 260-8511 or via email at marian.honeczy@maryland.gov

Sincerely,

Marian Honeczy, AICP, CA
Supervisor, Urban & Community Forestry

cc: Horace Henry, MD Forest Service



Larry Hogan, Governor
Boyd Rutherford, Lt. Governor
Mark Belton, Secretary
Joanne Throwe, Deputy Secretary

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Community Planning
and Building

March 31, 2017

David Brownlee
Calvert Co Dept of Community Planning & Building
150 Main St
Prince Frederick, MD 20678

Re: proposed amendment to the adopted Section 11-3 Calvert Co Forest Conservation administrative variance text

Dear Mr Brownlee:

Thank you for sending the proposed amendments to adopted Section 11-3 that addresses my concerns o flast year. As I have stated in my July 28, 2016 letter to you, these amendments address my concerns

Please forward a copy of the approved and signed version to my office.

Thank you again for sending your amendments to me to review. If you have any questions, I can be reached at (410) 260-8511 or via email at marian.honeczy@maryland.gov

Sincerely,

Marian Honeczy, AICP, CA
Supervisor, Urban & Community Forestry

cc: Mark Willis, Director
Horace Henry, MD FS

Attachment B

Proposed Amendments to Section 11-3, Administrative Variances of the Calvert County Zoning Ordinance

11-3 ADMINISTRATIVE VARIANCES

11-3.01 Administrative Variances

A. Purpose.

The purpose of this Section is to delegate to the Administrative Variance Officer approval authority to grant **variances from the strict application of the sign height, setback, and parking requirements of this Ordinance. variances for single family residences, accessory residential structures, and additions to residences and accessory structures.** The Administrative Variance Officer is also authorized to grant variances from ~~parking requirements for Single-Family Detached Dwellings (See Section 5-1.12 of this Ordinance), and~~ disturbance of trees, shrubs, plants, and specific areas considered priority for retention and protection under the forest conservation regulations (See Section 8-3.04.H.1.~~bc-e~~).

B. Application.

1. An applicant seeking a variance may request the same of the Board of Appeals, pursuant to Section 11-1.01.A of this Ordinance, without first applying for an administrative variance.
2. A person requesting an administrative variance must file the required application with the Department of Community Planning and Building.
3. The application consists of the following:
 - a. an application form;
 - b. application fee;
 - c. written documents bearing the signatures of all affected property owners demonstrating that they agree with the requested variance for the specific, proposed development activity. Affected property owners include all owners of all properties that abut the side or rear property line from which an administrative variance is sought; or in the case of an administrative variance request for front setback adjustment, all owners of all properties that abut a side property line of the subject property and those whose properties lie directly across the street from the subject property; and
 - d. a scale-drawing of the property showing the location and size of proposed structures and any additions to existing structures, as well as the distance between those structures and/or additions and all property boundaries.

C. Procedure.

The Administrative Variance Officer shall establish and publish procedures for the processing of applications including, but not limited to, the following:

1. Upon acceptance of the application, the Administrative Variance Officer shall mail a confirmatory notice to all affected property owners providing them with an opportunity to comment on the request within a specified time period.

~~Proposed Deleted Text based on DNR comments~~

New Text based on DNR comments

Replacing and ~~Deleting~~ Text previously recorded as Ordinance 27-15

2. The Department of Planning and Zoning shall send notice of a request for a variance to the forest conservation regulations in Section 8-3.04.H.1.~~bc-e~~ to the Maryland Department of Natural Resources within 15 days of receipt of a request for a variance. **In addition, a copy of the final administrative variance order shall be sent to the DNR Forestry Service.**
3. The applicant shall post the property with a notice of the variance request for a period of 10 days after acceptance of the application by the Administrative Variance Officer.
4. If adverse comments are received from any property owners objecting to the variance request, the applicant shall be required to withdraw the application and submit a variance request to the Board of Appeals.
5. Prior to making a decision, the Administrative Variance Officer may visit the property to verify information contained in the application.

D. Criteria.

The Administrative Variance Officer may grant **sign height**, setback and/or parking variances and variances to the forest conservation regulations found in 8-3.04.H.1.~~bc-e~~ only where it is demonstrated that peculiar and unusual practical difficulties exist on the parcel which warrant a **sign height**, setback and/or parking or forest conservation variance, and such difficulties are created by exceptional narrowness, shallowness, or shape of the parcel, by reason of exceptional topographical conditions, or by other extraordinary situations or conditions affecting the property. **Extraordinary situations for sign height and parking variances shall include meeting national corporate standards.** The applicant shall demonstrate that the following additional criteria have been met:

1. **The requested variance shall not increase the maximum sign height by more than 30 percent.**
- ~~4.2.~~ The requested setback ~~and/or parking~~ variance shall not reduce required setbacks by more than 50 percent and in no case shall the required setback be reduced to less than five feet. ~~For parking variances, the number of parking spaces may be reduced to a minimum of two spaces for single-family detached dwellings, and a minimum of one space for accessory apartments.~~
- ~~2.~~ **For variances from forest conservation regulations found in 8-3.04.H.1.b the comments from the Maryland Department of Natural Resources (DNR) must be addressed to the satisfaction of DNR or the applicant shall be required to withdraw the application and submit a variance request to the Board of Appeals.**
3. **For residential parking variances, the number of parking spaces may be reduced to a minimum of one space for single-family detached dwellings if there is an existing usable garage. The parking requirements for non-residential uses may be reduced up to 15% as specified in Section 6-3.01.E of this Ordinance. An administrative variance can be requested to reduce the required parking, up to 15%, if the site cannot accommodate the additional parking spaces as required by Section 6-3.01E.**

~~Proposed Deleted Text based on DNR comments~~

New Text based on DNR comments

Replacing and ~~Deleting~~ Text previously recorded as Ordinance 27-15

- 34.** ~~The p~~**Proposed residential accessory** structures for which a setback ~~and or parking~~ variance is requested shall not exceed 1000 square feet in gross floor area.
- 45.** Nothing in this Section is intended to authorize the Administrative Variance Officer to grant variances to State or local requirements that are intended to protect environmentally sensitive areas, such as streams, slopes, wetlands, natural heritage areas, or critical areas except for forest conservation priority retention requirements in Section 8-3.04.H.1.~~bc-e~~.
- 56.** Administrative variances may not be granted for after-the-fact variance requests or to correct a zoning violation. Such variance requests shall be made to the Board of Appeals.

E. Decisions.

Unless delayed by actions of the applicant or affected property owners, ~~or DNR,~~ the Administrative Variance Officer shall decide the issue raised by the application within 30 days of acceptance of the application. The decision shall be in writing and shall include findings of fact that support the decision. In granting an administrative variance, the Administrative Variance Officer may impose conditions that are reasonable or necessary for the protection of surrounding and neighboring properties.

F. Denials.

If the application is denied, all future variance applications involving substantially the same proposal on the same property shall be submitted to the Board of Appeals.

G. Appeals.

1. Any applicant aggrieved by a decision made pursuant to this Section may apply for a variance from the Board of Appeals in accordance with Section 11-1.01.A of this Ordinance.
2. Any person or persons, other than the applicant, aggrieved by a decision made pursuant to this Section may file an appeal with the Clerk to the Board of Appeals no later than 30 days from the date of the Administrative Variance Officer's decision. The Board of Appeals Clerk will schedule the appeal for the next available Board of Appeals public hearing. Such an appeal will be heard de novo in accordance with Section 11-1.04 of this Ordinance.

H. Fees.

The Board of County Commissioners shall be responsible for establishing the fee schedule for administrative variances, in accordance with Section 1-5 of this Ordinance.

~~Proposed Deleted Text based on DNR comments~~

New Text based on DNR comments

Replacing and ~~Deleting~~ Text previously recorded as Ordinance 27-15